

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
  
3                   INDECK KEYSTONE ENERGY,                 )  
4                   LLC, a Delaware limited                 )  
5                   liability company,                         )                   CONFIDENTIAL  
6   )  
7                   Plaintiff,                                 )                   CIVIL ACTION  
8                   vs.   )                   No. 04-CV-325E  
9                   VICTORY ENERGY OPERATIONS,             )                   Judge Sean J.  
10                   McLaughlin  
11                   LLC, a Delaware limited                 )  
12                   liability company,                         )  
13   )  
14                   Defendant.                                 )

13 The videotape deposition of MARK WHITE taken on  
14 behalf of the Plaintiff before Pamela B. Stinchcomb,  
15 Certified Shorthand Reporter in and for the State of  
16 Oklahoma, on the 1st day of February, 2006, in the  
17 City of Tulsa, State of Oklahoma, pursuant to the  
18 stipulations of the parties.

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9 Also appearing: Chris Petcos  
John Viskup  
Martin Swabb

## S T I P U L A T I O N S

14 It is hereby stipulated and agreed by and  
15 between the parties hereto that this deposition is  
16 being taken pursuant to notice and that the same may  
17 be taken at this time and place.

18 It is further stipulated and agreed that this  
19 deposition may be taken pursuant to the Federal  
20 Rules of Civil Procedure and that the same may be taken at  
21 this time and place.

3

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1 then just check to see if -- if overhead and profit  
 2 were maintained. And if they were, then the job came  
 3 out as expected. If they don't, they came out  
 4 better, then the job came out higher in profit. If  
 5 it came out less, it came out less than expected.

6 Q. Is there a standard percentage of the sale  
 7 price that VEO allocates to overhead?

8 A. Overhead changes from year to year. I  
 9 don't know that we use a standard overhead factor for  
 10 each and every project. When applying profit and  
 11 loss, we'll take the overhead. If the project spans  
 12 in one particular calendar year, we will take the  
 13 overhead for that particular calendar year for what  
 14 we believe it will be. If it spans over two years,  
 15 what we might do is we would take the -- or what we  
 16 would do is we'd take the overhead that spans over  
 17 the two-year period and the percentage -- the  
 18 percentage of the overhead as it's applied to the  
 19 overall percent.

20 Q. What was the overhead percentage in 2005?

21 A. I don't know.

22 Q. What was the overhead percentage in 2004?

23 A. I don't know.

24 Q. Does VEO have any documentation showing  
 25 what those overhead percentages were?

1 ordered.

2 Q. (By Mr. Gisleson) Under Item Number 16,  
 3 VEO's license of different and/or additional boiler  
 4 technologies from other entities and/or individuals  
 5 for industrial watertube boilers. Since January  
 6 2003, has VEO licensed any watertube boiler  
 7 technology other than the technology licensed from  
 8 EPTI?

9 A. No.

10 Q. Is the license agreement with EPTI the only  
 11 license agreement that VEO entered for watertube  
 12 boilers after January 2003 to the present?

13 MR. SHEEAN: I'm going to object to  
 14 the term license -- license here that you're using  
 15 with the last question and with this one because I  
 16 think it's potentially vague and confusing. And  
 17 I'll give you an example. Yesterday Mr. Viskup was using  
 18 the situation where they were representing Superior  
 19 Boiler as an instance where they were licensed. So  
 20 if -- I'm just -- you know, for clarification sake,  
 21 carve that out and then ask the question, you might  
 22 get a clearer answer.

23 Q. (By Mr. Gisleson) Setting aside any  
 24 contracts that VEO entered with sales  
 25 representatives, has it licensed any technology

1 A. We may. I don't know.

2 Q. What was the profit percentage for 2005 --

3 A. I don't know.

4 Q. -- per project? What was the profit  
 5 percentage in 2004?

6 A. I don't know.

7 Q. If I wanted to verify a calculation that  
 8 VEO used to determine profit as with Idaho State  
 9 University, what documentation would I look at?

10 MR. SHEEAN: Objection to the term  
 11 "verify". Vague.

12 A. Probably the easiest way to verify that  
 13 would to have our controller just provide the  
 14 equation that we use.

15 Q. (By Mr. Gisleson) Was there a physical  
 16 calculation that was performed to arrive at the Idaho  
 17 State University profit number?

18 A. I believe so.

19 Q. Does VEO still have a copy of that  
 20 calculation?

21 A. I don't know.

22 MR. GISLESON: It's obviously  
 23 information we'll need supplemented.

24 MR. SHEEAN: Well, I think our  
 25 production is consistent with what the judge

1 pertaining to watertube boilers, other than with  
 2 EPTI, since January 2003?

3 A. No.

4 Q. Turning to Item Number 20, the source of  
 5 the design of a Voyager series watertube boiler  
 6 including when design of that boiler commenced, the  
 7 engineers involved in developing that design, the  
 8 identification of drawings and specifications for the  
 9 design and the similarities and differences between  
 10 the Voyager series and the Keystone direct-fired  
 11 watertube boiler, including whether the Voyager  
 12 incorporates any of the Keystone technology. What is  
 13 the source of the design of the Voyager series  
 14 watertube boiler?

15 MR. SHEEAN: Objection, vague as to  
 16 the word "design" but you can understand if you  
 17 understand.

18 A. Okay. Well, I'll take design as the -- I  
 19 guess the boiler as a whole. And what I mean by that  
 20 is let's carve out burners, any peripheral equipment,  
 21 so we're just talking about raw boiler, if that's  
 22 acceptable. The source of the design actually comes  
 23 from me and with some input from Trent Miller. I  
 24 actually sat down and determined basically where we  
 25 wanted to go with this thing, what markets we wanted

1 to serve, what capacity range we wanted to compete  
 2 in, domestic or international marketing, and then  
 3 determined, you know, what type of boiler would be  
 4 the best suited for what we anticipate considering  
 5 our manufacturability, our engineering expertise, the  
 6 people we have within the company and their  
 7 backgrounds.

8 So in terms of the source, the source was  
 9 generated from me. We so chose to use a -- an "O"  
 10 type boiler, which includes a drum, over drum with a  
 11 open furnace. The "O" type is just an industry --  
 12 industry -- I don't want to use the term standard,  
 13 but I think it's just a reference to a particular  
 14 type, you know, in terms of configuration.

15 I had background at previous -- previously  
 16 to my employment not only with Zurn, Erie Power,  
 17 Alburg, as well as Victory Energy, prior to my  
 18 employment at Henry Vogt Machine Company. I worked  
 19 for Nebraska Boiler for a period of from 1984 to  
 20 1989. So I'm well versed in "O" type "D" type "A"  
 21 type, open bottom metal, waste heat recovery,  
 22 including membrane boilers with open with -- with  
 23 membrane furnaces for HRSG technology as well. So I  
 24 have a vast experience when it comes to boiler  
 25 technology.

1 Q. (By Mr. Gisleson) Prior to the Voyager, had  
 2 you ever designed an "O" type boiler?

3 A. Have I particularly?

4 Q. Yes.

5 A. Yeah, I have actually.

6 Q. When?

7 A. At Nebraska Boiler I was involved with the  
 8 Max fire design, involved another what we're  
 9 considering "O" type waste heat boilers. Did not  
 10 only the thermal design but I was involved in some  
 11 of -- some of the mechanical design with Trent Miller  
 12 and others.

13 Q. What was your role in designing the Max  
 14 fire boiler at Nebraska?

15 A. Well, the sales engineer -- and at that  
 16 time Nebraska boiler was not only involved in the --  
 17 the design of the unit, he was involved in the design  
 18 estimate and sale of the unit and about everything  
 19 else that went along with that. So anywhere from a  
 20 sizing and rating of the boiler to choosing number of  
 21 tubes, configuration, basically all the way through.

22 Q. In design of the Max fire, were you  
 23 starting from scratch?

24 MR. SHEEAN: Objection, vague.  
 25 A. Sometimes. I mean, it depends. You get in

101 1 specific applications. It depends on the  
 2 application. There were some, I guess, some -- some  
 3 boilers that were used as a template. We had a few  
 4 models, none of which were really cast in stone.  
 5 However, there are always applications that we were  
 6 starting from scratch.

7 Q. (By Mr. Gisleson) When you say starting  
 8 from scratch, what do you mean?

9 A. Just that. You start from setting your  
 10 tube pitch, longitudinal pitch, tube diameter,  
 11 extended fin surface, amount of radiant surface, if  
 12 you have it, amount of convective surface as you  
 13 have, the drum sizes, including the steam in the mud  
 14 drum, configuration of the unit, shipability of the  
 15 unit, mechanical parameters of the unit, all the way  
 16 through.

17 Q. When was the last time while you were with  
 18 Nebraska boiler that you personally designed an "O"  
 19 type boiler from scratch?

20 A. Oh, I don't recall. It was too long ago to  
 21 remember.

22 Q. Approximately?

23 A. Last time? That probably would have been  
 24 somewhere probably the last two or three years I was  
 25 there, so prior to my departure in '89. So somewhere

102 1 around that time frame.

2 Q. In what years?

3 A. Probably '87 to '89 time frame be a guess  
 4 at this point. You're asking me something that  
 5 happened more than a few days ago.

6 Q. When was the next time that you personally  
 7 were involved in designing an "O" type boiler from  
 8 scratch after 1989, approximately?

9 A. I did some thermal design work at Vogt.  
 10 Those weren't really "O" type boilers. Large waste  
 11 heat recovery units. I did some thermal rating  
 12 there. At Zurn I may have been involved in a couple  
 13 of waste heat projects. Well, I was involved in the  
 14 Idaho University project, basically not in the actual  
 15 design of the unit per se but in reviewing the design  
 16 and looking through it.

17 Q. Anything else?

18 A. No, not that I recall.

19 Q. When you were involved with designing "O"  
 20 type boilers from scratch at Nebraska Boiler, did you  
 21 design the entire boiler yourself?

22 A. Not necessarily. I would set up the  
 23 transverse longitudinal pitch, tube count, tube  
 24 spacing. If there was the membrane type boiler, it  
 25 would include the membrane surface, those type of